

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

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In the Matter of )  
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Implementation of the Pay Telephone )  
Reclassification and Compensation )  
Provisions of the Telecommunications )  
Act of 1996 )  
 )  
Southwestern Bell Telephone Company )  
Comparably Efficient Interconnection Plan )  
for Payphone Service Providers )  
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CC Docket No. 96-128

**COMMENTS OF ONCOR COMMUNICATIONS, INC.**

Oncor Communications, Inc. ("Oncor"), by its attorneys, hereby submits its comments on the Comparably Efficient Interconnection ("CEI") Plan for pay telephone service, filed by Southwestern Bell Telephone Company ("SWBT") on December 30, 1996.<sup>1</sup>

INTRODUCTION

Oncor is a provider of interstate interexchange operator-assisted (0+) calling services. Oncor provides 0+ services from Bell Operating Company ("BOC") public payphones, including payphones in SWBT's local exchange service territories. Oncor is the presubscribed carrier serving such payphones pursuant to agreements entered into with payphone location providers (*i.e.*, the owners of the premises where the payphones are located). Oncor competes with other service providers to be the presubscribed carrier at BOC payphones pursuant to the premises owner selection plan established in 1988 by the U. S. District Court for the District of

<sup>1</sup> Public Notice, "Pleading Cycle Established For Comments on Comparably Efficient Interconnection Plans For Payphone Service Providers," DA 97-31, released January 8, 1997.

Columbia.<sup>2</sup> Before enactment of the Telecommunications Act of 1996 ("1996 Act"),<sup>3</sup> which added Section 276 to the Communications Act ("Act") -- and the Commission's recent promulgation of rules to implement Section 276 -- the BOCs, including SWBT, were excluded from any participation in the payphone interexchange carrier selection process. Their only role was to implement the Presubscribed Interexchange Carrier ("PIC") selections made by payphone location owners.

Section 276 mandates the reclassification of BOC payphone service and requires the Commission to promulgate regulations for that purpose. The issues of whether BOCs, including SWBT, should be permitted to participate in the payphone interexchange carrier selection process, and what conditions should apply to their participation, are addressed by Section 276(b)(1)(D) of the Act. That provision obligates the Commission to establish regulations that:

provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest;<sup>4</sup>

In its Payphone Reclassification Order,<sup>5</sup> the Commission concluded that allowing BOCs to negotiate with location providers regarding the selection of interLATA service providers from

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<sup>2</sup>See United States v. Western Electric Company, 698 F. Supp. 348 (D.D.C. 1988).

<sup>3</sup>Pub. Law. 104-104, 110 Stat. 56 (1996).

<sup>4</sup>47 U.S.C. § 276((b)(1)(D).

<sup>5</sup>Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, FCC 96-388, released September 20, 1996; Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Payphone Reclassification Order").

the BOC payphones on their premises would serve the public interest. This determination by the Commission fundamentally changes SWBT's and other BOCs' roles in the PIC selection process from payphones in their regions, and changes those companies' incentives in fulfillment of their current responsibilities.

Significantly, the Commission's determination to allow BOCs, including SWBT, to negotiate with location providers is not unconditional. Rather, that permission is expressly conditioned on each BOC submitting to the Commission and obtaining Commission approval of a CEI plan.<sup>6</sup> Therefore, Oncor urges the Commission to carefully evaluate the SWBT CEI plan to ensure that it contains adequate safeguards against anticompetitive conduct by SWBT.

**The Commission Must Ensure that SWBT's Payphone CEI Plan  
Contains Protections Against Discrimination by SWBT Regarding  
Selection of Interexchange Service Providers and Against Mismanagement  
by SWBT in Its Role as PIC Administrator for Payphones in Its Region**

Oncor has reviewed SWBT's payphone CEI plan from its perspective as a company which competes in the market for operator-assisted interexchange services from payphones, including local exchange carrier payphones. Based upon that review, Oncor is concerned that the SWBT CEI plan does not contain provisions which will either restrain anticompetitive behavior by SWBT in the negotiations with location owners regarding interexchange services from SWBT payphones, or protect the integrity of the payphone PIC selection and ordering processes.

In the Payphone Reclassification Order, the Commission stated that:

. . . a location provider's ability to choose should be protected from unjust and unreasonable practices which seek to foreclose meaningful choice. Such practices include unreasonable

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<sup>6</sup>Payphone Reclassification Order, *supra* at ¶¶ 237, 239.

interference with pre-existing agreements between location providers and payphone service providers or carriers, or conduct which is unduly coercive of the location provider's right to choose the carrier for payphones on its premises. Such conduct may violate Section 201 of the Act, which proscribes unjust and unreasonable practices by common carriers.<sup>7</sup>

The entirety of SWBT's payphone CEI plan is directed to so-called "equal access" parameters governing interconnection services to other payphone providers. In other words, SWBT's CEI plan is limited to the payphone services market. In reviewing the plan, Oncor was dismayed and disappointed to discover that nothing in the plan addresses SWBT's ability to discriminate or to exploit advantages it enjoys as the steward of the PIC ordering process in the solicitation of interexchange carrier agreements with payphone location providers, including owners of premises where SWBT payphones are located, or in the implementation of PIC selections for lines associated with SWBT payphones. SWBT's plan is silent in this regard despite the Commission's express recognition of the importance of meaningful consumer choice in interexchange service provider selection.

It is imperative that SWBT's payphone CEI plan contain adequate and appropriate safeguards to avoid skewing the fairness of the presubscribed carrier selection process. In this regard, it is critical to recognize SWBT's role, not only as an entity which will be competing with interexchange carriers and other third parties with regard to location provider contracts, but also as the entity which acts as the order processing agent for all interexchange carriers' PIC changes. Once SWBT becomes allowed to negotiate with payphone location owners regarding the selection of interLATA carriers from payphones, SWBT will be both a competitor and the administrator of the PIC ordering process. Because these dual roles will place SWBT in an

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<sup>7</sup>Payphone Reclassification Order, *supra* at ¶ 242.

inherent conflict of interest situation, it becomes critical that its CEI plan contain sufficient safeguards to protect against SWBT acting in its role as PIC administrator in a manner which undermines competition in the marketing of interexchange services from payphone locations.

In order to comply with the letter and the spirit of the Commission's CEI requirements for BOC payphone services, SWBT's CEI plan must contain specific provisions which address the following critical points:

1. Describe in detail how SWBT will manage the payphone PIC selection and order implementation process;
2. Describe how SWBT will ensure that all PIC orders obtained pursuant to SWBT agreements with location owners will not be treated differently than those obtained by other vendors, and that all valid PIC orders and location provider agreements will be honored and will not be subject to interference by SWBT or anyone else;
3. Describe how SWBT marketing and sales personnel will be trained and supervised to ensure that they do not misrepresent SWBT's role in the payphone PIC selection process;
4. Describe how SWBT personnel involved in the PIC ordering and implementation processes will be trained and supervised to ensure that they do not abuse their roles in the PIC ordering process so as to interfere with the sales and marketing of interexchange services from payphones.

SWBT's payphone CEI plan contains no provisions which in any way address SWBT's role in the PIC selection process from payphones. Nothing in the plan will protect the public, including competing providers of interexchange services from payphones, against the improper efforts by SWBT to select -- and perhaps ultimately to provide -- interexchange services from SWBT payphones. Neither does the plan address how SWBT intends to fulfill its responsibilities

as the PIC order administrator. That will be a critical aspect of SWBT's payphone plans in light of its impending opportunity to negotiate with location providers regarding PIC selections.

### CONCLUSION

Accordingly, Oncor objects to SWBT's payphone CEI plan for its exclusion of any provisions to ensure that SWBT will neither discriminate against competitors in the selection of interexchange services from its payphones nor mismanage the PIC ordering process in its role as PIC administrator throughout its service areas. For the reasons stated in these comments, Oncor respectfully urges the Commission to require SWBT to modify its payphone CEI plan, as described in these comments, to provide sufficient safeguards for the interexchange services market from payphones and the payphone services market itself. Such changes to the CEI plan should be made by SWBT -- and approved by the Commission following public comment -- before SWBT is allowed to negotiate with payphone location providers regarding the selection of interexchange services, pursuant to Section 276(b)(1)(D) of the Act and the Payphone Reclassification Order.

Respectfully submitted,

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February 7, 1997

CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "*Comments of Oncor, Inc.*" in Docket 96-128, was served this 7th day of February, 1997, upon the following:

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